

FILED  
Clerk  
District Court

OCT 17 2005

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE**

**NORTHERN MARIANA ISLANDS**

YU SUK CHUNG,

Plaintiff,

vs.

WORLD CORPORATION,

Defendant.

) Civil Action No. **04-00001**

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTIONS IN LIMINE**

) **Date: October 21, 2005**

) **Time: 10:00 a.m.**

) **Judge: Hon. Alex R. Munson**

**INTRODUCTION**

Defendant has moved for the exclusion of several documents and types of testimony as follows:

1           1.       There may or may not have been any efforts or negotiations between Plaintiff and  
2 Defendant to settle this cause of action.

3           2.       Defendant may have other unrelated prior or subsequent claims, suits, or settlements,  
4 for the reason that such claims, suits or settlements would not be in any way material or relevant to  
5 this cause or to Plaintiff's claims. In particular, Plaintiff's counsel represents a Mr. Rankin in a  
6 threatened lawsuit against World relating to a lost portfolio of art prints. World believes that this  
7 suit will be filed just prior to the trial in this case to prejudice the jury, or will be brought up at trial  
8 to improperly prejudice the jury as Mr. Rankin is allegedly suffering from cancer.

9           3.       The alleged employment of two contract workers named Rogelio Cada and "Journie"  
10 whom Plaintiff has alleged to be illegal employees prior to Plaintiff's arrival on Saipan. However,  
11 such information is not relevant to any of the allegations of the complaint, except as an attempt to  
12 prejudice the jury.

13           4.       Defendant World moves this court for an order excluding Plaintiff's expert, Joon  
14 Hwan Park, from offering expert testimony regarding the damages alleged by Plaintiff. This  
15 motion is made on the grounds that Joon Hwan Park is not qualified as an expert to testify with  
16 respect to a calculation of damages because he lacks the requisite knowledge, skill, experience,  
17 training, or education in order to testify as an expert witness and that allowing this testimony  
18 would violate Rule 26 of the Federal Rules of Civil Procedure.

19           5.       Saipan Article of Incorporation check list Bate stamped 255-256 of Plaintiff's Trial  
20 Exhibits.

21           6.       Any references to Korean Foreign Investment Law or violation thereof.

22           7.       Any reference to shares owned by Mr. Bu-Hyun Lee as the product of any improper  
23 act.

8. Any reference to the Pau Pau project of World Resort that was not completed.

9. Any reference to the amount of Plaintiff's attorney's fees.

10. Any reference to the discovery sanction imposed on World Corporation.

11. Two pictures of individuals moving items out of a container and Bate stamped as 331-332 of Plaintiff's Trial Exhibits.

### ARGUMENT

#### **I. PLAINTIFF'S EXPERT, MR. JOON HWAN PARK SHOULD BE EXCLUDED FROM TESTIFYING FOR FAILURE TO PROVIDE AN ADEQUATE REPORT AND FOR LACK OF QUALIFICATIONS.**

The Federal Rules provide that a party wishing to call an expert witness at trial must "The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years." Fed. R. Civ. P. 26(a)(2)(B).

Thus, the report must include six things:

1. a "complete statement of all opinions to be expressed and the basis and reasons therefore";
2. all "data or other information" that the expert has "considered" in forming his or her opinions;
3. any exhibits to be used as a summary or support for the opinions;
4. the qualifications of the witness, including a list of all publications authored in the last ten years;

1 5. the compensation to be paid for "the study and the testimony"; and

2 6. a "listing" of any other "cases" in which the witness has testified *as an expert* "at trial or  
3 by deposition" within the previous four years.

4 In this case, items no. 2 and 4 were not provided. None of the statistics or evidence the  
5 report uses has been disclosed. For example page 2 of the report indicates certain statistics for  
6 occupancy of hotels yet does not disclose the source of these statistics. In addition, the report fails  
7 to disclose the compensation provided to the expert. Plaintiff has also failed to include the report as  
8 one of its trial exhibits. As such, it is appropriate for this court to bar his testimony.

9 In addition, Joon Hwan Park lacks the customary experience such as that of an economist in  
10 order to offer damage calculations into evidence. Defendant is unaware of any prior precedent in  
11 this jurisdiction for a "hotel expert" testifying on the possible lost income of the Plaintiff. Plaintiff  
12 should call an economist for such testimony. Such witness testimony would not assist the jury in  
13 deciding any issue in this case and thus, violates Rule 702 of the Federal Rules of Evidence.

14 **II. ANY REFERENCE TO ATTORNEY'S FEES SHOULD BE PROHIBITED.**

15 Plaintiff's complaint does not articulate a legal basis for an award of attorney's fees, yet the  
16 complaint contains a prayer for said fees. Absent a statutory basis that was well pled in the  
17 complaint, any mention of fees would be improper and irrelevant. Furthermore, it would violate  
18 Rule 403 of the Federal Rules of Civil Procedure in that the mention of such fees is not probative of  
19 any claim in this case while discussing these matters would prejudice the jury by arousing pity for  
20 the Plaintiff for incurring such expense.

1           **III. ANY REFERENCE TO ATTORNEY'S FEES SHOULD BE PROHIBITED.**

2           Throughout the settlement conferences in this case, Plaintiff has referenced settlement  
3 discussions taking place prior to the filing of suit. Such discussions are inadmissible under Rule  
4 408 of the Federal Rules of Civil Procedure.

5           **IV. ALLEGATIONS OF PRIOR BAD ACTS SHOULD BE BARRED.**

6           Throughout discovery in this case, Plaintiff has sought questioning of prior business dealings  
7 of the Defendant in an obvious attempt to utilize such evidence to prejudice the jury. The items  
8 Defendant seeks to exclude for violation of Federal Rules of Evidence, Rule 608 are items no. 2-3  
9 and 5-8 of the items sought to be excluded. While it is difficult to determine how these and other  
10 matters will be presented, it is certain that Plaintiff will attempt to utilize evidence it claims show a  
11 violation of the Korean Foreign Investment law. The documents Bate stamped as 255-256 of  
12 Plaintiff's Trial Exhibits show this strategy. The translation of this document also reveals that  
13 Plaintiff intends to use this document to show fraud by Mr. Lee Bu Hyun and by extension to  
14 World Resort. In addition, Plaintiff has sought information in several depositions and in written  
15 discovery about Mr. Cada and Journie. Plaintiff has suggested that these individuals were illegally  
16 hired prior to Plaintiff's arrival on Saipan.

17           Such evidence is bared by Rule 608. Plaintiff should not be allowed to sling mud about  
18 irrelevant matters to try to show that World is "bad." Likewise, this document reveals an  
19 allegation that the "Korean Foreign Investment Law" have been violated. Plaintiff has not notified  
20 the parties that an issue of foreign law would be at issue in this case. These issues are irrelevant to  
21 an employment case.

Likewise, Plaintiff spent a good deal of attention on Defendant's prior plans to build a hotel at Pau Pau. This has no conceivable relevance except to prejudice the jury against World for failing to complete the project and having terminated a lease of public land.

**V. THE PICTURES LISTED AS BATE STAMPED DOCUMENTS 331-332 SHOULD BE EXCLUDED BECAUSE PLAINTIFF FAILED TO DISCLOSE THESE DOCUMENTS.**


Defendant is unaware of the purpose the two pictures of individual moving items out of a shipping container. However, said documents were not provided to Defendant in discovery and must therefore, be barred.

**CONCLUSION**

For the foregoing reasons, Defendant's motions in limine should be granted.

Dated this 17<sup>th</sup> day of October, 2005.

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